

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1568 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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BIPINKUMAR BHAGWANJI OIL MILLS

Versus

STATE OF GUJARAT

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Appearance:

MR DM THAKKAR for Petitioner

MR BD DESAI,AGP for the respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/07/97

ORAL JUDGEMENT

Rule. Mr. B.D.Desai, learnedAGP waives service of the Rule on behalf of the respondents. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

The petitioner , by way of this petition, challenges the orders at Annexures "A" and "B" passed by the respondents confiscating 9250 kgs of peanuts valued at Rs.1,08,711/- which, according to the respondents, was

in excess than the stock shown in the stock register. Reading the papers, it appears that the farmers brought the stock of peanuts on the midnight of 20-11-1993 and, thereafter it appears that the Income-tax Department raided the premises of the petitioner in the early morning at 4.00 a.m. on 20-11-93 and the necessary procedure was in progress when the inspection was made by the officer of the respondent Department. It was, therefore, not possible for the petitioner to enter the stock received in the stock register. It is not in dispute that on the same evening on 20-11-1993 the petitioner had, in fact, entered ther stock he had received from the farmers. The petitioner, in fact, produced the forwarding slipts, VII and XII forms and affidavits of the concerned farmers when he gave his explanation. Considering the explanation tendered by the petitioner, I think that the same is plausible and is acceptable. In view of the facts and circumstances, which were beyond the control of the petitioner, the penalty of confiscating the entire quantity of goods is not called for. It is, therefore, required to be interfered with.

In the result, the petition is allowed. The orders at Annexures "A" and "B" passed by the respondents are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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